

O-296-19

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3260132 BY ALLEN KERR
TO REGISTER:**

Indigo Blue

AS A TRADE MARK IN CLASS 41

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER NO. 411378
BY O2 WORLDWIDE LIMITED**

Background & Pleadings

1. On 29 September 2017, Allen Kerr (“the applicant”) applied to register the trade mark “Indigo Blue” for the following services in class 41:

Arranging and conducting of concerts; Services for the showing of video recordings; Services providing entertainment in the form of live musical performances; Showing of prerecorded entertainment; Singing concert services; Song publishing; Song writing services; Songwriting; Sound recording and video entertainment services; Sound recording services; Sound recording studio services; Music concerts; Music entertainment services; Music festival services; Music performance services; Music performances; Music production; Music publishing; Music publishing and music recording services; Music publishing services; Music recording studio services; Musical concert services; Musical concerts by radio; Musical concerts by television; Musical entertainment services; Musical performances; Entertainer services; Entertainer services provided by musicians; Entertainment; Entertainment by means of concerts; Entertainment by means of radio; Entertainment by means of roadshows; Entertainment by means of telephone; Entertainment by means of television; Entertainment in the form of live musical performances (Services providing -); Entertainment in the form of recorded music (Services providing -); Entertainment in the form of television programmes (Services providing -); Entertainment services; Entertainment services for matching users with audio and video recordings; Entertainment services for matching users with computer games; Entertainment services for producing live shows; Entertainment services for sharing audio and video recordings; Entertainment services in the form of concert performances; Entertainment services in the form of musical vocal group performances; Entertainment services performed by a musical group; Entertainment services performed by musicians; Entertainment services performed by singers; Entertainment services provided by a music group; Entertainment services provided by a musical group; Entertainment services provided by a musical vocal group; Entertainment services provided by performing artists; Entertainment services provided by vocalists.

The application was published for opposition purposes on 13 October 2017.

2. A Notice of Opposition was filed by O2 Worldwide Limited (“the opponent”) on 15 January 2018. The opposition is based upon sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”) and, in respect of both grounds, the opposition is directed against all of the services in the application.

3. Under s. 5(2)(b), the opponent relies upon the trade marks listed below. The respective goods and services relied upon are laid out in full as an appendix to this decision.

- European Union Trade Mark (“EUTM”) 13031869 (“the 869 mark”):

INDIGO

Filing date: 27 March 2014; Registration date: 24 September 2016

The opponent indicates that it intends to rely upon all goods and services in classes 9, 35, 38, 39, 41 and 43 for which the mark is registered.

- EUTM 5914437 (“the 437 mark”):

indigo₂

Filing date: 17 May 2007; Registration date: 29 March 2011

The opponent indicates that it intends to rely upon all services in classes 41 and 43 for which the mark is registered.

- United Kingdom Trade Mark (“UKTM”) 2455748A (“the 748 mark”):

indigo₂

indigo₂

(SERIES OF TWO)

Filing date: 16 May 2007; Registration date: 27 March 2009

The opponent indicates that it intends to rely upon all services in classes 41 and 43 for which the mark is registered.

- EUTM 16057002 (“the 002 mark”):

BLUE

Filing date: 18 November 2016; Registration date: 22 November 2017

The opponent indicates that it intends to rely upon all goods and services for which the mark is registered.

- UKTM 3003477 (“the 477 mark”):

THE BLUE

Filing date: 24 April 2013; Registration date: 13 December 2013

The opponent indicates that it intends to rely upon all goods and services in classes 9, 35, 38 and 41 for which the mark is registered.

4. The opponent argues that the visual, phonetic and conceptual similarities between its earlier marks and the contested mark, when paired with the identity and/or similarity between the respective specifications would lead to a likelihood of confusion on the part of the relevant public. It submits that it enjoys a reputation in (at least) entertainment and entertainment venue services and nightclub services and that the nature of its reputation is “high tech and “young, trendy and cool””¹. The opponent considers that, as a result of the link consumers will make between the competing marks, the applicant will gain an unfair advantage and the distinctiveness of the opponent’s earlier marks will be diluted. Additionally, the opponent claims that its brand could be tarnished by the use of the applied for mark through a lack of quality in the applied for services.

5. In its counterstatement, the applicant denies the basis of both grounds of opposition. Its counterstatement is reproduced in its entirety below:

¹ See page 21, paragraph 3 of the opponent’s written submissions filed in lieu of a hearing

“I deny the claims in section 5.(2) the Opponent’s have made against me, I do not agree that there exists a likelihood of any confusion on the part of the public, and likelihood of any association with the Opponent. I deny any comparisons, or highly simulates (sic) comparisons.

I also deny the claim in section 5.(3) the Opponent’s have made against me, that I would tarnish or harm the reputation, and that I would be profiteering of the Opponent, or diluting the distinctiveness of the Opponent’s marks.

I’m willing to come to a compromise regarding the trade mark, and limit my use of the trade mark.”²

6. The opponent in these proceedings is represented by Stobbs IP. The applicant is not legally represented. Only the opponent filed evidence. Neither party requested a hearing but the opponent elected to file written submissions in lieu. This decision is taken following a careful reading of all the papers which I will refer to, as necessary.

Evidence

7. The opponent’s evidence comprises a witness statement dated 29 October 2018 from Mr Peter Holmes of Telefónica UK Limited and supporting exhibits PH1 to PH14. Mr Holmes provides the statement in his capacity as Intellectual Property Counsel of one of the subsidiary companies which form the “Telefónica Group of Companies”, whose parent company is Telefónica SA. He explains that the “O2 Group of Companies” which form part of the Telefónica Group of Companies and operate under the O2 brand include O2 Worldwide Limited³ (the opponent), O2 Holdings Ltd, Telefónica UK Limited and Telefónica Germany GmbH & Co. OHG. I note the following details from Mr Holmes’ statement:

² I note, for clarity, that the case file does not suggest that the applicant has made any attempt to limit its specification during the course of these proceedings.

³ An extract from the Companies House website and a certification of the incorporation of O2 Worldwide Limited are enclosed as exhibit PH1.

- May 2005 marked the inception of the INDIGO/INDIGO2 brand for O2, which saw the opponent partner with Anschutz Entertainment Group (“AEG”) to redevelop what was previously the Millennium Dome, with an aim to turn it into a premier UK venue.
- The venue, which opened in 2007, resides within what is now The O2 arena in London and has a maximum capacity of 2,420 and a VIP room capacity of 300. The venue was rebranded from INDIGO2 to INDIGO in April 2014.
- The venue hosted more than 250 acts between 2007 and 2017, including a number of high profile artists and comedians, with boxing matches scheduled for October and November 2018. Ticket prices can vary from £24.00 to £139.75.
- Since opening, attendance at the INDIGO venue has exceeded 1 million (1,721,509 up to September 2018), its annual footfall peaking in 2017 at 198,010.
- From 2007 to 2016, the opponent spent approximately £930,000 on the promotion of the INDIGO2 brand alone (presumably the INDIGO brand from 2014).
- The INDIGO2 and INDIGO brands have been subject to a high level of exposure throughout the UK and have largely been advertised in conjunction with the opponent’s ‘O2 mark’, which enjoys a significant reputation in telecommunications.
- The colour blue is a core element of the INDIGO branding, consistent with the branding of the opponent’s O2 trade marks.

8. Enclosed at exhibit PH2 is an extensive schedule of events held at the indigoO2 from 2007 to 2014 (before the venue’s re-brand) and at INDIGO from 2017⁴ (after its re-brand). A wide variety of events are listed including those in the field of music, dance, sport and comedy. A number of high-profile acts are listed; The Who, Black Eyed Peas and Jimmy Carr, to name a few.

9. Enclosed at PH3 are a number of articles from the O2 website, specifically its ‘News & Views’ and ‘News & Updates’ areas. Articles dated 5 February 2016 and 14 October 2014 refer to performances at the *Indigo at the O2* by Coldplay and Nile Rodgers and CHIC, respectively. Examples of promotional materials displaying the 437 or 748

⁴ I note that some event information is retrieved from third party site *Skiddle.com* which, Mr Holmes admits, “may not be wholly accurate”, but should nonetheless be considered “representative of the past events at the O2 and the impression of the INDIGO brand online.”

marks are also enclosed. Details of forthcoming events at The O2 Arena and specifically at the Indigo at The O2 as of 10 October 2014 are also provided, though the opponent admits that the acts may be (or may have been) subject to cancellations and other changes. Again, a variety of entertainment-based events are scheduled.

10. At PH4, the opponent provides slides from a presentation delivered in 2009 by the CEO of AEG entitled 'London – A World Class City'. The presentation makes reference to London tourism, but appears to relate predominantly to The O2 Arena (at large), offering details on the transport options available and a map of the arena's various areas. That said, indigoO2 does feature within the presentation. One of the slides provides a map highlighting its specific location within the O2 and the venue is listed as a 2,500-seat music club which hosted 170 event days in 2009. A quote from Pollstar Editor-in-Chief Mr Gary Bongiovanni is included in the presentation, which states that "the reputation of The O2 is rapidly growing to iconic status". It is not clear to whom the presentation was delivered.

11. Exhibit PH5 sees The O2 arena listed as the number one arena venue of 2017⁵.

12. At exhibit PH6, the opponent encloses various marketing materials advertising indigoO2 at The O2 as a 'state of the art London venue' alongside what appear to be presentation slides detailing the various venue hire options offered at The O2 arena, one being indigo at The O2, in relation to which the content states "Our sister venue is perfect for big events on a smaller scale. It's versatile. You can hire it for anything from an awards dinner for up to 540, to a music gig for 2,800." The breadth of the materials' circulation is unclear.

13. Exhibits PH7 and PH8 both relate to the parking facilities on offer at The O2 arena. Enclosed at PH7 is a webpage headed 'Parking :: Getting Here | The O2'. The available parking areas are divided into 'The O2 arena', 'The O2 arena Valet' and 'Indigo at The O2', each of which demands a unique tariff which can be paid either on a pre-booked basis or 'on the day'. Exhibit PH8 indicates that 27,624 pre-bookings were made at the dedicated Indigo car park from November 2009 to April 2017.

⁵ The data is produced by Pollstar and is headed 'Year End Worldwide 2017 Ticket Sales Top 200 Arena Venues'.

14. Exhibit PH9 comprises a number of press releases published by the opponent between 2007 and 2012, detailing opportunities either to perform at the indigO2 or to attend specific events taking place at the indigO2, and a selection of articles and reviews relating to past or future performances at the venue. A review by The Telegraph is dated 18 October 2015 and headed 'Squeeze, O2 Indigo, review: 'they can still cut it''; an article published on clashmusic.com is dated 3 August 2017 and headed 'Win: Jamaica House at Indigo, O2 Arena Tickets'; an undated review⁶ by The Express is headed 'Indigo at the O2 LIVE REVIEW – The Real Thing, Heatwave and Odyssey'; a review by The Evening Standard dated 20 February 2018 is headed 'War Child BRITS week review: Ed Sheeran pedals his one-man magic' and includes a photo captioned 'One man band: Ed Sheeran performs live at Indigo at the O2' and, finally, a review published by The Edge on 24 December 2016 is headed 'Review: The Darkness at indigo at The O2, London'. In its witness statement, the opponent submits that in 2017 The Telegraph held a circulation of 393,310, The Express a circulation of 364,933 and The Evening Standard a circulation of 867,325.

15. Enclosed at exhibit PH10 are examples of advertising exposure for the opponent's venue which, Mr Holmes explains, "includes significant marketing collateral and adverts in various newspapers, magazines and posters"⁷. The venue is mostly referred to as indigO2 and the adverts relate to both venue hire (described as 'London's most versatile venue) and events held at the venue. There is no indication as to specifically where or when the images were displayed or the extent of distribution. Also included within the exhibit are what appear to be extracts from online networking site 'Twitter' where users have posted (or 'tweeted') details of upcoming events at Indigo at the O2. It is unclear how many site users had sight of, or expressed an interest in, the posts.

16. The opponent describes exhibit PH11⁸ as examples of magazine adverts, third party references and examples of original artwork and magazine layouts. Alongside articles detailing readership details of publications including Metro, Music Week, NME,

⁶ The opponent indicates that the article was published on 28 April 2017, though this is not clear from the exhibit.

⁷ See paragraph 18 of Mr Holmes' witness statement

⁸ Exhibit PH12 appears to be a duplicate of PH11

The Fly and Time Out are a further selection of advertisements referencing indigO2 and indigO2 at The O2. Presumably the opponent is suggesting that the adverts were displayed in some (if not all) of the above publications, however, the only advert with an identifiable source is one displayed within the Metro, in its Arts & Entertainment section. Though there is no indication of when the advert was published, six performances at indigO2 are advertised, all appearing to be scheduled in 2011. The opponent's witness statement indicates that Metro's current circulation is 1,471,663.

17. Exhibit PH13 is headed 'INDIGO branding and design' and is said to show "examples of INDIGO branding and design taken from a Google images search." The exhibit provides a copy of the venue's seating (and standing) plan⁹, an indication of the indigO2 logo and various images offering an internal perspective of the venue whilst occupied and unoccupied and of the indigO2 'gig gallery'.

18. At exhibit PH14 are extracts from The O2 website advertising its *O2 Blueroom*, which is described as "a space unlike any other at The O2". Readers are encouraged to visit the Blueroom 'pre-show', 'post-show' and 'even when there's no show'. The only mention of the opponent's INDIGO brand within the exhibit is on an enclosed venue map providing a layout of the O2 arena (which includes the aforementioned *O2 Blueroom*). A shaded area of the map is labelled 'indigo at the O2'.

Section 5(2)(b)

19. The opposition is based partly upon section 5(2)(b) of the Act, which reads as follows:

"5. – [...]

(2) A trade mark shall not be registered if because – [...]

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

⁹ *anyticket.co.uk*

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

20. An earlier trade mark is defined in s. 6 of the Act, which states:

“6. - (1) In this Act an “earlier trade mark” means –

(a) a registered trade mark, international trade mark (UK), Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

21. Given their filing dates, all of the trade marks relied upon by the opponent qualify as earlier marks in accordance with section 6 of the Act. Only the 437 and 748 marks had been registered for five years or more at the date on which the opposed application was published and, as such, both are subject to the proof of use provisions contained in s. 6A of the Act. However, in its counterstatement, the applicant indicated that it did not require the opponent to provide evidence in support of its proof of use claims. As a consequence, the opponent is entitled to rely upon all goods and services it has identified in its Notice of Opposition.

Section 5(2)(b) - Case law

22. The following principles are gleaned from the decisions of the courts of the European Union in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v.*

Thomson Multimedia Sales Germany & Austria GmbH, Case C-120/04, Shaker di L. Laudato & C. Sas v OHIM, Case C-334/05P and Bimbo SA v OHIM, Case C-591/12P.

The principles:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

23. The opponent has made a claim to enhanced distinctiveness in respect of its 'INDIGO' brand. Of its three earlier 'INDIGO' marks, the 869 mark, in my view, offers the highest degree of similarity in terms of both the marks themselves and the respective specifications. Consequently, I propose to proceed, at least initially, on the basis of the 869 mark alone. I will return to consider the opponent's remaining marks should it appear necessary to do so.

Comparison of goods and services

24. In its written submissions filed in lieu of a hearing, the opponent provides a comparison of the marks' respective specifications. It has highlighted the services which it considers to be identical and I have presented these in the table below. All are proper to class 41:

Opponent's services	Applicant's services
EUTM 13031869 ("INDIGO") Entertainment; arranging and conducting of concerts; cinema presentations; club services [entertainment or education]; discotheque services; dubbing; entertainer	Arranging and conducting of concerts; Services for the showing of video recordings; Services providing entertainment in the form of live musical

services; film production, other than advertising films; holiday camp services [entertainment]; music composition services; music-halls; night clubs; orchestra services; production of music; production of radio and television programmes; radio entertainment; recording studio services; rental of audio equipment; rental of sound recordings; scriptwriting services; television entertainment; theatre productions; videotape editing; videotape film production; videotaping; interactive entertainment services; entertainment and information services provided by means of telecommunication networks; provision of entertainment by means of television and Internet protocol television; provision of musical events; entertainment club services; presentation of live performances; publishing services.

performances; Showing of prerecorded entertainment; Singing concert services; Song publishing; Song writing services; Songwriting; Sound recording and video entertainment services; Sound recording services; Sound recording studio services; Music concerts; Music entertainment services; Music festival services; Music performance services; Music performances; Music production; Music publishing; Music publishing and music recording services; Music publishing services; Music recording studio services; Musical concert services; Musical concerts by radio; Musical concerts by television; Musical entertainment services; Musical performances; Entertainer services; Entertainer services provided by musicians; Entertainment; Entertainment by means of concerts; Entertainment by means of radio; Entertainment by means of roadshows; Entertainment by means of telephone; Entertainment by means of television; Entertainment in the form of live musical performances (Services providing -); Entertainment in the form of recorded music (Services providing -); Entertainment in the form of television programmes (Services providing -); Entertainment services; Entertainment services for matching users with audio and video recordings; Entertainment services for matching users with computer games; Entertainment services for producing live shows; Entertainment

	<p>services for sharing audio and video recordings; Entertainment services in the form of concert performances; Entertainment services in the form of musical vocal group performances; Entertainment services performed by a musical group; Entertainment services performed by musicians; Entertainment services performed by singers; Entertainment services provided by a music group; Entertainment services provided by a musical group; Entertainment services provided by a musical vocal group; Entertainment services provided by performing artists; Entertainment services provided by vocalists.</p>
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25. The following services are present in both the applicant's and the opponent's specification and are, therefore, self-evidently identical:

Arranging and conducting of concerts; entertainer services; production of music/music production

26. In addition to cases of *literal* identity, in *Gérard Meric v Office for Harmonisation in the Internal Market*, the General Court ("GC") posed another provision under which goods can be considered identical. It stated:

"29. ... the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut fur Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark".

Though strictly relating to goods, the principle can also be applied to the comparison of services. On that basis, I make the following assessments:

- The opponent has *entertainment* registered as a service. In my view, this encompasses (at least) the following services in the application: *Services providing entertainment in the form of live musical performances; Showing of prerecorded entertainment; Sound recording and video entertainment services; Music entertainment services; Musical entertainment services; Entertainment; Entertainment by means of concerts; Entertainment by means of radio; Entertainment by means of roadshows; Entertainment by means of telephone; Entertainment by means of television; Entertainment in the form of live musical performances (Services providing -); Entertainment in the form of recorded music (Services providing -); Entertainment in the form of television programmes (Services providing -); Entertainment services; Entertainment services for matching users with audio and video recordings; Entertainment services for matching users with computer games; Entertainment services for producing live shows; Entertainment services for sharing audio and video recordings; Entertainment services in the form of concert performances; Entertainment services in the form of musical vocal group performances; Entertainment services performed by a musical group; Entertainment services performed by musicians; Entertainment services performed by singers; Entertainment services provided by a music group; Entertainment services provided by a musical group; Entertainment services provided by a musical vocal group; Entertainment services provided by performing artists; Entertainment services provided by vocalists.*
- As well as being captured by *entertainment*, the applicant's *entertainer services provided by musicians* is covered by the opponent's *entertainer services*.
- The applicant's *song writing services* and *songwriting* are encompassed by the opponent's *music composition services*.
- The opponent's *rental of sound recordings* is captured by the applicant's *sound recording services*.

- The applicant's *sound recording studio services* falls within the opponent's *recording studio services*.
- Though also likely to fall under *entertainment*, the applicant's *musical concerts by television* falls explicitly within the opponent's *provision of entertainment by means of television*.
- In addition to being covered by the opponent's *entertainment* (at large), the applicant's *music performance services, music performances, musical performances* and *music festival services* are also captured by the opponent's *provision of musical events*.
- The opponent's *publishing services* covers the applicant's *song publishing, music publishing; music publishing and music recording services* and *music publishing services*;
- Though not necessarily consistent with *Meric*, I consider the opponent's *cinema presentations* to be identical to the applicant's *services for the showing of video recordings*; cinema presentations being essentially an opportunity for parties to stream and share video recordings with a wider audience. *Services for the showing of video recordings* is also likely to fall within the remit of the opponent's *entertainment*.

All of the competing services are, therefore, identical.

The average consumer and the nature of the purchasing act

27. As the case law above indicates, it is necessary for me to determine who the average consumer is for the goods at issue. I must then determine the manner in which these goods are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

28. For the majority of the conflicting class 41 services, at least those that can be caught within the ‘entertainment services’ umbrella, the average consumer is likely to be a member of the general public with an interest in entertainment, looking to indulge their individual preferences. Though I appreciate that some of the listed services are likely to command a reasonable ticket price, particularly high profile events, which may give rise to a heightened degree of consideration for budgetary purposes, generally the services will garner what I would describe as an average degree of attention, sufficient for consumers to consider factors such as the suitability of timing, event content and location. In my experience, and as supported by the opponent’s evidence, the marks are likely to be predominantly encountered visually on traditional advertisements, leaflets or social media platforms and websites. That said, it would not be unusual for any subsequent arrangements to be made over the telephone, which means that the marks’ aural impact cannot be ignored.

29. In my view, some of the contentious services are likely to appeal to a different consumer group. Those consumers likely to take an interest in services relating to music production or publishing, for example, are likely to approach the purchase from (at least) a somewhat professional perspective, given that the services are fairly niche in nature and are not generally, to my knowledge, inexpensive. On that basis, I find it unlikely that a consumer with a vested professional interest in the services would make the selection casually. Instead it seems fair to assume, in the absence of any evidence to the contrary, that consumers will apply a degree of attention which is higher than average to allow them to assess factors such as compatibility and the reputational value of a provider. Visual considerations are likely to remain the most predominant in the selection process, with the services advertised via traditional means and websites.

However, I imagine that word of mouth recommendations can play a key role in the wider music industry, which could give rise to oral communication of the marks.

Comparison of trade marks

30. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (“CJEU”) stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*, Case C-591/12P, that:

“34. ...it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

31. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions they create.

32. The trade marks to be compared are displayed in the table below:

Opponent’s trade mark	Applicant’s trade mark
INDIGO	Indigo Blue

33. The opponent's mark is composed of a single word (INDIGO) presented in capital letters with no embellishment or figurative elements to speak of. Consequently, it is solely in the word itself that the mark's overall impression lies.

34. The applicant's mark comprises two words (Indigo and Blue), each of which is presented in lower case with the exception of the first letter, which is capitalised. Both are ordinary, dictionary words and neither can be said to dominate the other when it comes to the mark's overall impression. The overall impression is likely to rest in the mark as a whole.

Visual comparison

35. A clear point of visual similarity between the respective marks is the coincidence of the six letter word INDIGO/Indigo. Given that nothing turns on the variation in the adopted casing, the marks are visually different to the extent that the applicant's incorporates an additional four letter word (Blue), which has no counterpart in the opponent's. Keeping in mind that, generally, the beginnings of marks have most impact on consumers, I find the visual similarity to be of a medium degree.

Aural comparison

36. Consumers are likely to articulate the opponent's mark in three syllables, specifically IN-DI-GO. Articulation of the applicant's mark will begin with an identical three syllables, but it comprises an additional fourth syllable (BLU). On balance, this results in what I consider to be a fairly high degree of aural similarity between the marks.

Conceptual comparison

37. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

38. The average consumer will easily recognise the opponent's mark as a colour. In my experience, consumers will either describe *indigo* as a particular shade of blue or a particular shade of purple. For those that view it as a shade of blue, the addition of the word 'Blue' in the applicant's mark does little to alter the existing concept presented by Indigo. In other words, 'INDIGO', in isolation, is likely to be interpreted conceptually in precisely the same way as 'Indigo Blue'; in both cases, consumers are likely to be left with an impression of a dark blue colour and nothing more. In that circumstance, I find the marks to be conceptually identical. However, for the consumers to whom *indigo* is a shade of purple, the addition of 'Blue' could prompt more of a conceptual distinction, by way of introducing a new variant of indigo. Still, given what I consider to be a fairly close relationship between blue and purple, being relatively similar colours, the variation in the colour brought to mind by the respective marks is likely to be minimal, with both marks signifying an indigo colour, albeit one with greater shades of blue. Conceptually, the marks remain at least highly similar.

Distinctive character of the earlier trade mark

39. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, the CJEU stated that:

"22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been

registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

40. Of its INDIGO marks, the opponent submits the following:

“The marks INDIGO2 and INDIGO are inherently strong and distinctive. The word INDIGO (because of its very definition) when used as a trade mark in respect of the goods and services covered is of *at least* more than average distinctive character. In addition to this, its strength and distinctive character has been further increased by the significant use made. Strength in this context is equivalent to “degree” of distinctiveness in CJEU language. As we know, if a mark enjoys a high degree of distinctiveness, as a result of its long standing use, it can be considered that there is a greater likelihood of confusion because the mark enjoys an enhanced distinctive character.”¹⁰

41. The applicant makes no submission on the earlier mark’s distinctiveness.

42. When it comes to matters of *inherent* distinctiveness, it is widely accepted, though only a guideline, that words which are invented often possess the highest degree of distinctive character, whilst words which are suggestive or allusive of the goods and/or services relied upon generally possess the lowest. The opponent’s mark is comprised of a single dictionary word which is well known to, and will be immediately understood by, the average consumer. That being so, I can see no meaningful relationship, or indeed any relationship at all, between the word INDIGO and the opponent’s class 41 services. On that basis, I find the mark to possess a medium degree of inherent distinctiveness.

¹⁰ See page 17, paragraph 2 of the opponent’s written submissions filed in lieu of a hearing

43. I turn now to consider whether the opponent's 869 mark has acquired an *enhanced* distinctiveness, using the provisions outlined in *Lloyd Schuhfabrik* as a guideline. As the likelihood of confusion assessment must be made by reference to the territory in which the applicant seeks registration, it is specifically the UK market which is relevant for assessing enhanced distinctiveness. Whilst there is no indication of market share in its evidence, use of the opponent's INDIGO marks, collectively, has been fairly long-standing and the opponent submits that approximately £930,000 has been spent on the promotion of the INDIGO and INDIGO2 brands from 2007 to 2016. Given that the INDIGO2 mark was rebranded to INDIGO in 2014, it follows that a reasonable proportion of that sum will relate to the marketing of its 869 mark in particular. In 2014 the brand's marketing expenditure amounted to £15,316, in 2015 it amounted to £15,262 and in 2016 it amounted to £14,871. Despite the small decrease in spend, the venue has maintained an impressive footfall, as detailed in the evidence summary, with nearly 200,000 customers attending in 2017. Furthermore, consumers UK-wide have been exposed to the advertisement of the venue itself and the events it hosts. Given the publications' respective circulation rates, reviews of such events published in *The Telegraph*, *The Express* and *The Evening Standard*, for example, are still likely to have been seen by a significant proportion of the relevant public, though I accept that not all readers will have read the specific articles, and less will recall the specific venue name. Bearing in mind that, in those articles, the venue, even before its rebrand to just INDIGO, is routinely referred to as 'Indigo at the O2', it seems likely that those consumers who do recall the mark will identify the associated services as originating from a particular undertaking, specifically the opponent. All things considered, I am satisfied that the opponent's earlier INDIGO mark has earned a small degree of enhanced distinctiveness through its use in relation to entertainment services, specifically as the name of an entertainment venue.

Likelihood of confusion

44. In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective services and vice versa. As I mentioned above, it is

also necessary for me to keep in mind the distinctive character of the opponent's trade mark, as the more distinctive it is, the greater the likelihood of confusion.

45. Earlier in this decision I reached the following conclusions:

- The competing class 41 services are identical;
- The average consumer is a member of the general public at large or a professional consumer within the entertainment industry;
- Visual considerations are likely to dominate the selection process, though aural considerations are also relevant;
- A normal degree of attention will be paid to the selection of the majority of services, though some are likely to command a higher than average degree;
- The competing marks are visually similar to a medium degree, aurally similar to a fairly high degree and conceptually similar to at least a high degree (if they are not conceptually identical);
- The opponent's trade mark possesses a medium degree of inherent distinctiveness and has acquired a small degree of enhanced distinctiveness through its use as the name of an entertainment venue.

46. To make the assessment as to a likelihood of confusion, I must adopt the global approach advocated by the case law and take account of my earlier conclusions. I keep in mind the average consumer for the services at issue, the nature of the purchasing process and the fact that the average consumer rarely has the chance to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them retained in their mind.

47. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises the trade marks are not the same but puts the similarity that exists between the marks and goods and/or services down to the responsible undertakings being the same or related. In *L.A. Sugar Limited v By Back Beat Inc*¹¹, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

¹¹ BL O/375/10

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.”

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

48. In *Kurt Geiger v A-List Corporate Limited*¹², Mr Purvis, as the Appointed Person, pointed out that the level of ‘distinctive character’ is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

“38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that ‘the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion’. This is indeed what was said in *Sabel*. However, it is a far from complete statement which can lead to error if applied simplistically.

39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it.”

49. The identity between the respective services and the distinctiveness enjoyed by the opponent’s earlier mark are factors which, at least generally, point towards a likelihood of confusion. Visual considerations are likely to dominate the selection process and I have found the visual similarity between the marks to be of a medium degree. Given the lack of a tangible conceptual distinction between the respective marks (whether deemed identical or highly similar), even for those services which command a higher than average degree of attention, consumers are, in my view, likely to succumb to the effects of imperfect recollection and, when faced with the later mark, will assume, on the basis of their shared or similar meanings, that they are simply being reacquainted with the earlier mark. This will particularly be the case for those who see the mark as conceptually identical. In other words, direct confusion will occur. In case I am wrong in that conclusion, I will go on to consider the likelihood of *indirect* confusion.

¹² BL O-075-13

50. Consumers are, in my view, likely to readily identify the common element between the competing marks, specifically the shared inclusion of the word INDIGO. I bear in mind the comments of Mr James Mellor Q.C. as the Appointed Person in *Duebros Limited v Heirler Cenovis GmbH*¹³, where he stressed that indirect confusion should not be found simply because marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark; this is mere association, not indirect confusion. However, in the current case, relying solely on the inherent distinctiveness of the opponent's INDIGO mark and keeping in mind that it is the distinctiveness of the marks' shared element which is key to my assessment, I find it likely that consumers will move beyond mere association and encounter confusion, even where selecting services which require a higher than average degree of attention. In the *Cheeky Indian*¹⁴ case, Mr Mellor recommended that, to support a finding of indirect confusion, one should be specific as to the mental process involved on the part of the average consumer. Whilst I do not find the relationship between the respective marks consistent with any of the examples listed in *L.A. Sugar* (above), these are by no means exhaustive. Considering that identical services are in play, in my view, consumers familiar with the earlier INDIGO mark will, upon meeting the later mark, immediately recognise the familiarity and distinctiveness of the INDIGO element and, given that the word BLUE does very little to separate the marks conceptually, conclude erroneously that the second mark originates from the same undertaking as the first; that the later mark is simply another 'INDIGO' mark belonging to the opponent. In other words, they will be subject to indirect confusion. Having reached this conclusion on the basis of the earlier mark's inherent distinctiveness only, the outcome is made increasingly likely when taking into account the small enhancement of distinctiveness previously awarded to the earlier mark in respect of entertainment services, specifically as an entertainment venue. The opposition under s. 5(2)(b) succeeds.

Section 5(3)

51. For the purposes of s. 5(3), the opponent relies upon EUTM 13031869, EUTM 5914437 and UKTM 2455748A (collectively its "Indigo marks").

¹³ BL O/547/17

¹⁴ BL O-219-16

52. Section 5(3) of the Act states:

“(3) A trade mark which-

(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark”.

53. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, [1999] ETMR 950, Case 252/07, *Intel*, [2009] ETMR 13, Case C-408/01, *Adidas-Salomon*, [2004] ETMR 10 and C-487/07, *L’Oreal v Bellure* [2009] ETMR 55 and Case C-323/09, *Marks and Spencer v Interflora*. The law appears to be as follows:

a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark’s reputation and distinctiveness; *Intel*, paragraph 42.

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel*, paragraphs 76 and 77.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel*, paragraph 74.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact on the earlier mark; *L'Oreal v Bellure NV*, paragraph 40.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and*

Spencer v Interflora, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

54. The conditions of section 5(3) are cumulative. Firstly, the applicant must show that its mark is similar to the proprietor's mark. Secondly, it must show that the earlier mark has achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them, in the sense of the earlier mark being brought to mind by the later mark. Fourthly, assuming that the first three conditions have been met, section 5(3) requires that one or more of the three types of damage claimed will occur. It is unnecessary for the purposes of section 5(3) that the goods and/or services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

55. Given that my findings thus far have related solely to the opponent's 869 mark, in the interest of procedural economy, I will (at least to begin with) approach the s. 5(3) assessment on the basis of this mark only. I should note, for completeness, that I would be willing to accept that any reputation found in the 869 mark extends to the remaining INDIGO marks (and vice versa), based on the evidence filed by the opponent, which demonstrates use of all three. The opponent claims that its 869 mark has acquired a reputation in respect of all services it is registered for in classes 41 and 43, but specifically in relation to its core entertainment and entertainment venue services.

The relevant date

56. The s. 5(3) ground must be established as at the date that the contested application was filed; in the current case, 29 September 2017.

Reputation

57. In *General Motors*, Case C-375/97, the CJEU held that:

“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it”.

58. As the earlier mark is an EUTM, I keep in mind the guidance of the CJEU in *Pago International GmbH v Tirolmilch registrierte GmbH*, Case C-301/07, where the court held that:

“20. By its first question, the national court in essence asks the Court, first, to clarify the meaning of the expression ‘has a reputation in the Community’, by means of which, in Article 9(1)(c) of the regulation, one of the conditions is laid down which a Community trade mark must fulfil in order to benefit from the protection accorded by that provision and, second, to state whether that condition, from a geographical point of view, is satisfied in a case where the Community trade mark has a reputation in only one Member State.

21. The concept of ‘reputation’ assumes a certain degree of knowledge amongst the relevant public.

22. The relevant public is that concerned by the Community trade mark, that is to say, depending on the product or service marketed, either the public at large or a more specialised public, for example traders in a specific sector (see, by way of analogy, *General Motors*, paragraph 24, with regard to Article 5(2) of the directive).

23. It cannot be required that the Community trade mark be known by a given percentage of the public so defined (*General Motors*, by way of analogy, paragraph 25).

24. The degree of knowledge required must be considered to be reached when the Community trade mark is known by a significant part of the public concerned by the products or services covered by that trade mark (*General Motors*, by way of analogy, paragraph 26).

25. In examining this condition, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it (*General Motors*, by way of analogy, paragraph 27).

26. In view of the elements of the main proceedings, it is thus for the national court to determine whether the Community trade mark at issue is known by a significant part of the public concerned by the goods which that trade mark covers.

27. Territorially, the condition as to reputation must be considered to be fulfilled when the Community trade mark has a reputation in a substantial part of the territory of the Community (see, by way of analogy, *General Motors*, paragraph 28).

28. It should be noted that the Court has already ruled that, with regard to a Benelux trade mark, it is sufficient, for the purposes of Article 5(2) of the directive, that it has a reputation in a substantial part of the Benelux territory, which part may consist of a part of one of the Benelux countries (*General Motors*, paragraph 29).

29. As the present case concerns a Community trade mark with a reputation throughout the territory of a Member State, namely Austria, the view may be taken, regard being had to the circumstances of the main proceedings, that the territorial requirement imposed by Article 9(1)(c) of the regulation is satisfied.

30. The answer to the first question referred is therefore that Article 9(1)(c) of the regulation must be interpreted as meaning that, in order to benefit from the protection afforded in that provision, a Community trade mark must be known by a significant part of the public concerned by the products or services covered by that trade mark, in a substantial part of the territory of the Community, and that, in view of the facts of the main proceedings, the territory of the Member State in question may be considered to constitute a substantial part of the territory of the Community”.

59. In *Burgerista Operations GmbH v Burgista Bros Limited* [2018] EWHC (IPEC), HHJ Hacon considered whether an EU trade mark registered for restaurant services had a reputation under article 9(2)(c) of the EU Trade Mark Regulation (which is equivalent to s.10(3) of the Trade Marks Act). The judge summarised the law as follows:

“69. I draw the following from the judgments of the Court in *PAGO* and *Iron & Smith* and from the opinion of Advocate General Wahl in *Iron & Smith*:

(1) An EU trade mark has a reputation within the meaning of art.9(2)(c) if it was known to a significant part of the relevant public at the relevant date.

(2) The relevant public are those concerned by the products or services covered by the trade mark.

(3) The relevant date is the date on which the defendant first started to use the accused sign.

(4) From a geographical perspective, the trade mark must have been known in a substantial part of the EU at the relevant date.

(5) There is no fixed percentage threshold which can be used to assess what constitutes a significant part of the public; it is proportion rather than absolute numbers that matters.

(6) Reputation constitutes a knowledge threshold, to be assessed according to a combination of geographical and economic criteria.

(7) All relevant facts are to be taken into consideration when making the assessment, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by undertaking in promoting it.

(8) The market for the goods or services in question, and from this the identity of the relevant public, ought to assume a paramount role in the assessment.

(9) The territory of a single Member State (large or small) may constitute a substantial part of the EU, but the assessment must be conducted without consideration of geographical borders”.

60. The test for a qualifying ‘reputation’ is found in *General Motors* and is set out above. The earlier mark must be known by ‘a significant part’ of the relevant public. Some commentators have regarded this as setting a low threshold. In *Iron & Smith kft v Unilever NV*, Case C-125/14, the CJEU was asked whether a Community Trade Mark (now an EUTM) with a reputation ‘in the Community’ (now the European Union), but not in the Member State where infringement was alleged, was capable of being infringed under provisions of the Community Trade Mark Regulation (now the European Union Trade Mark Regulation) broadly equivalent to s. 5(3) of the Act. The court answered that:

“If the earlier [EUTM] has already acquired a reputation in a substantial part of the territory of the European Union, but not with the relevant public in the Member State in which registration of the later national mark concerned by the opposition has been applied for, the proprietor of the [EUTM] may benefit from the protection introduced by Article 4(3) of Directive 2008/95 where it is shown that a commercially significant part of that public is familiar with that mark, makes a

connection between it and the later national mark, and that there is, taking account of all the relevant factors in the case, either actual and present injury to its mark, for the purposes of that provision or, failing that, a serious risk that such injury may occur in the future”.

61. An EUTM may therefore be known to “a significant part of the public concerned by the products or services covered by that trade mark” in the EU, without meeting that threshold in a particular Member State. Nevertheless, provided that the mark is known to “a commercially significant part of” the relevant public in the relevant Member State concerned, it may be entitled to extended protection in that Member State on account of its reputation in the EU. The distinction is clearer in the French version of the same judgment, which talks of a “commercially non-negligible” part of the relevant public in the Member State being aware of the earlier CTM (now EUTM) and making a link with the later national trade mark. A “commercially non-negligible” part of the relevant public therefore represents a lower threshold than the standard requirement. It follows that the standard requirement must be for more than a non-negligible or minimal level of reputation. This makes sense because s. 5(3) is intended to provide more extensive protection to marks with a certain level of reputation. Overall, and whilst the *Iron & Smith* case represented a different factual context, this suggests that the level of reputation required under s. 5(3) is more than minimal, and probably higher than that which is required to support a passing off right under the common law in the UK.

62. The considerations made at paragraph 43 in relation to the enhanced distinctiveness of the earlier mark are much the same as those I make now when deliberating the matter of its reputation. Even without having been provided an indication of the size of the relevant market, or indeed the opponent’s respective share, it is clear from the evidence before me that the Indigo venue has enjoyed a reasonable degree of success in the entertainment sector. A number of high profile events held at the venue have been reviewed in a number of highly circulated publications though, again, not all readers will have taken note of the venue name. Still, the venue itself sees a substantial footfall of customers which is increasing year on year, despite a decrease in marketing expenditure, though the outgoings in this area remained significant. Based on the evidence before me, I am satisfied that, at the relevant date, the opponent’s INDIGO mark enjoyed a reputation in the UK (and by extension the

EU) in respect of entertainment services on account of its use as the name of a specific venue, given that it is likely to have been known by a significant proportion of the relevant public at the relevant date.

Link

63. My assessment of whether the public will make the required link between the marks must account for all relevant factors. The factors identified in *Intel* are:

(i) the degree of similarity between the marks

I assessed the similarity between the respective marks at paragraphs 35 to 38 of this decision. I adopt those findings here.

(ii) the nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public

I have found the majority of the contested services to be identical to the opponent's reputed services (*entertainment*). Whilst those that remain may be seen to share a degree of closeness if not directly with entertainment services then certainly with music, if there is any similarity to be found with the reputed services, it is likely to be of only a low degree. For clarity, I reach this conclusion in respect of the following:

song writing services; songwriting; sound recording services; sound recording studio services; song publishing, music publishing; music publishing and music recording services; music publishing services

(iii) the strength of the earlier mark's reputation

Based on the evidence before me, I am satisfied that the earlier mark enjoys a modest reputation in respect of entertainment services. I am reluctant to pitch it any higher without sight of the venue's turnover figures and/or an indication of market share.

(iv) the degree of the earlier mark's distinctive character, whether inherent or acquired through use

The earlier mark has a medium degree of inherent distinctiveness and has acquired a small enhancement through its use as the name of a venue which provides an array of entertainment services.

(vi) whether there is a likelihood of confusion

At paragraph 50, I found a likelihood of direct confusion. If this is found to be incorrect, at paragraph 51, I concluded that consumers are likely to, at least, experience indirect confusion, although this was based on identity between all the services.

Weighing all factors, particularly the reputation and distinctiveness associated with the earlier mark and the relationship between the respective services, I find that the necessary 'link' is established for all services where I have found identity. I am not satisfied that a link will be made in respect of the reputed services and those in the application which are similar to a low degree, at best.

Damage

64. The next step in the enquiry is to assess whether any of the pleaded types of damage will arise. The opponent claims that use of the contested mark would, without due cause, take unfair advantage of, or be detrimental to the distinctive character or repute of, the opponent's INDIGO marks.

65. The taking of unfair advantage of the distinctive character or reputation of an earlier mark has no effect on the consumers of the earlier mark's goods and services. Instead, it means that consumers are more likely to buy the goods and services of the later mark than they would otherwise have been if they had not been reminded of the earlier mark. Essentially, the later mark will get a marketing or commercial 'leg-up' because the link with the earlier, reputed, mark means that the owner of the later mark does not have to put as much effort into making the later mark known because it already feels familiar or sends a message to consumers as to what they can expect. As shown in

the evidence, the opponent has invested a substantial amount in marketing its INDIGO brand and, given that I have already found a likelihood of confusion between the marks, there is an automatic unfair advantage; the applicant could stand to gain custom as a result of the confusion. Of course, this applies only to those services where a link has been established; where there is no link, there can be no damage.

66. As it is only necessary that one of the heads of damage is satisfied, the s. 5(3) ground succeeds at this stage in relation to the services for which I found a link.

Conclusion

67. The opposition has succeeded. I do not, therefore, consider it necessary to revisit the opponent's remaining earlier marks. Subject to any successful appeal, the application will be refused.

Costs

68. As the opponent has been successful, it is entitled to a contribution toward its costs. Awards of costs in proceedings are governed by Annex A of Tribunal Practice Notice ("TPN") 2 of 2016. Applying the guidance in that TPN, I award costs to the opponent on the following basis:

Official fee (TM7):	£200
Preparing a Notice of Opposition and reviewing the counterstatement:	£400
Preparing evidence and written submissions:	£800
Total:	£1400

69. I order Allen Kerr to pay O2 Worldwide Limited the sum of £1400. This sum is to be paid within fourteen days of the expiry of the appeal period or within

fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 30th day of May 2019

**Laura Stephens
For the Registrar**

Appendix

Goods and services relied upon by the opponent

EU013031869

Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer software; fire-extinguishing apparatus; abacuses; accounting machines; accumulators, electric; acid hydrometers; acidimeters for batteries; acoustic conduits; acoustic couplers; actinometers; adding machines; aerials; aerometers; agendas (electronic -); air analysis apparatus; alarm bells, electric; alarms; alcoholmeters; alidades; altimeters; ammeters; amplifiers; amplifying tubes; anemometers; animated cartoons; anode batteries; anodes; answering machines; anti-glare glasses; anti-glare visors; anti-interference devices [electricity]; anti-theft warning apparatus; anticathodes; apertometers [optics]; armatures [electricity]; asbestos clothing for protection against fire; asbestos gloves for protection against accidents; asbestos screens for firemen; astronomy (apparatus and instruments for -); audiovisual teaching apparatus; automated teller machines [atm]; azimuth instruments; balances [steelyards]; balancing apparatus; bar code readers; barometers; batteries, electric; batteries, electric, for vehicles; batteries for lighting; battery boxes; battery chargers; battery jars; beacons, luminous; bells [warning devices]; betatrons; binoculars; blinkers [signalling lights]; blueprint apparatus; boiler control instruments; branch boxes [electricity]; breathing apparatus, except for artificial respiration; breathing apparatus for underwater swimming; buzzers; cabinets for loudspeakers; cables, electric; calculating disks; calculating machines; calibrating rings; calipers; camcorders; cameras [photography]; capacitors; capillary tubes; carpenters' rules; carriers for dark plates [photography]; cases especially made for photographic apparatus and instruments; cases fitted with dissecting instruments [microscopy]; cash registers; cassette players; cathodes; cathodic anti-corrosion apparatus; cell phone straps; centering apparatus for photographic transparencies; central processing units [processors]; chargers for electric batteries; chemistry apparatus and instruments; chips [integrated circuits]; choking coils [impedance]; chromatography apparatus for laboratory use; chronographs [time recording apparatus]; cinematographic cameras; cinematographic film, exposed; circuit breakers; circuit closers; cleaning apparatus for phonograph records; clinometers; clothing especially made for laboratories; clothing for protection against accidents, irradiation and fire; clothing for protection against fire; coaxial cables; coils, electric; coin-operated apparatus (mechanisms for -); coin-operated mechanisms for television sets; collectors, electric; commutation (electric apparatus for -); commutators; compact disc players; compact discs [audio-video]; compact discs [read-only memory]; comparators; compasses (directional -); compasses [measuring instruments]; computer game programs; computer keyboards; computer memory devices; computer operating programs, recorded; computer peripheral devices; computer programmes [programs], recorded; computer programs [downloadable software]; computer software, recorded; computers; conductors, electric; connections for electric lines; connectors [electricity]; contact lenses; contacts, electric; containers for contact lenses; containers for microscope slides; control panels [electricity]; converters, electric; copper wire, insulated; correcting lenses [optics]; cosmographic instruments; counter-operated apparatus (mechanisms for -); couplers [data processing equipment]; couplings, electric; covers for electric outlets; crash test dummies; cupels [laboratory]; current rectifiers; cyclotrons; darkroom lamps [photography]; darkrooms [photography]; data processing apparatus; decompression chambers; demagnetizing apparatus for magnetic tapes; densimeters; densitometers; detectors; diagnostic apparatus, not for medical purposes; diaphragms [acoustics]; diaphragms for scientific apparatus; diaphragms [photography]; dictating machines; diffraction apparatus [microscopy]; discharge tubes, electric, other than for lighting; disk drives for computers; disks, magnetic; distance measuring apparatus; distance recording apparatus; distillation apparatus for scientific purposes; distribution boards [electricity]; distribution boxes [electricity]; distribution consoles [electricity]; divers' masks; diving suits; dna chips; dog whistles; dosimeters; downloadable image files; downloadable

music files; downloadable ring tones for mobile phones; drainers for use in photography; dressmakers' measures; drying apparatus for photographic prints; drying racks [photography]; ducts [electricity]; dvd players; dynamometers; ear plugs for divers; editing appliances for cinematographic films; egg-candlers; electric door bells; electric installations for the remote control of industrial operations; electric loss indicators; electricity conduits; electricity mains (materials for -) [wires, cables]; electrified fences; electrified rails for mounting spot lights; electro-dynamic apparatus for the remote control of railway points; electro-dynamic apparatus for the remote control of signals; electrolyzers; electromagnetic coils; electronic notice boards; electronic pens [visual display units]; electronic pocket translators; electronic publications, downloadable; electronic tags for goods; encoded identification bracelets, magnetic; encoded magnetic cards; enlarging apparatus [photography]; epidiascopes; ergometers; exposure meters [light meters]; extinguishers; eyeglass cases; eyeglass chains; eyeglass cords; eyeglass frames; eyepieces; eyepieces (instruments containing -); facsimile machines; false coin detectors; fermentation (apparatus for -) [laboratory apparatus]; fibre [fiber (am)] optic cables; film cutting apparatus; films, exposed; filters for respiratory masks; filters for ultraviolet rays, for photography; filters [photography]; fire alarms; fire beaters; fire blankets; fire boats; fire engines; fire escapes; fire hose; fire hose nozzles; flash-bulbs [photography]; flashlights [photography]; floppy disks; fluorescent screens; fog signals, non-explosive; food analysis apparatus; frames for photographic transparencies; franking (apparatus to check -); frequency meters; furniture especially made for laboratories; fuse wire; fuses; galena crystals [detectors]; galvanic batteries; galvanic cells; galvanometers; garments for protection against fire; gas testing instruments; gasometers [measuring instruments]; gauges; glass covered with an electrical conductor; glazing apparatus for photographic prints; global positioning system [gps] apparatus; gloves for divers; gloves for protection against accidents; gloves for protection against x-rays for industrial purposes; goggles for sports; grids for batteries; hands free kits for phones; head cleaning tapes [recording]; headphones; heat regulating apparatus; heliographic apparatus; hemline markers; high-frequency apparatus; holders for electric coils; holograms; horns for loudspeakers; hourglasses; hydrometers; hygrometers; identification sheaths for electric wires; identification threads for electric wires; identity cards, magnetic; igniting apparatus, electric, for igniting at a distance; incubators for bacteria culture; inductors [electricity]; integrated circuit cards [smart cards]; integrated circuits; intercommunication apparatus; interfaces for computers; inverters [electricity]; invoicing machines; ionization apparatus not for the treatment of air or water; jigs [measuring instruments]; juke boxes for computers; juke boxes, musical; junction boxes [electricity]; junction sleeves for electric cables; knee-pads for workers; laboratory centrifuges; laboratory trays; lactodensimeters; lactometers; laptop computers; lasers, not for medical purposes; leather (appliances for measuring the thickness of -); lens hoods; lenses for astrophotography; letter scales; levelling instruments; levels [instruments for determining the horizontal]; life belts; life buoys; life jackets; life nets; life saving apparatus and equipment; life-saving rafts; light conducting filaments [optical fibers fibres]; light dimmers [regulators], electric; light-emitting diodes [led]; light-emitting electronic pointers; lighting ballasts; lightning arresters; limiters [electricity]; locks, electric; logs [measuring instruments]; loudspeakers; magic lanterns; magnetic data media; magnetic encoders; magnetic tape units for computers; magnetic tapes; magnetic wires; magnets; magnets (decorative -); magnifying glasses [optics]; manometers; marine compasses; marine depth finders; marking buoys; marking gauges [joinery]; masts for wireless aerials; material testing instruments and machines; mathematical instruments; measures; measuring apparatus; measuring devices, electric; measuring glassware; measuring instruments; measuring spoons; mechanical signs; megaphones; mercury levels; metal detectors for industrial or military purposes; meteorological balloons; meteorological instruments; meters; metronomes; micrometer screws for optical instruments; micrometers; microphones; microprocessors; microscopes; microtomes; milage recorders for vehicles; mirrors for inspecting work; mirrors [optics]; modems; money counting and sorting machines; monitoring apparatus, electric; monitors [computer hardware]; monitors [computer programs]; motor fire engines; mouse [data processing equipment]; mouse pads; nautical apparatus and instruments; naval signalling apparatus; navigation apparatus for vehicles [on-board computers]; navigational instruments; neon signs; nets for protection against accidents; nose clips for divers and swimmers; notebook computers; objectives [lenses] optics; observation instruments; octants; ohmmeters; optical apparatus and instruments; optical character readers; optical condensers; optical data media; optical discs; optical glass; optical goods; optical lamps; optical lenses; oscillographs; ovens for laboratory use; oxygen transvasing apparatus; ozonisers [ozonators]; parking meters; particle accelerators; pedometers; peepholes [magnifying lenses] for doors; periscopes; personal stereos; petrol gauges; phonograph records; photocopiers [photographic, electrostatic, thermic]; photometers; phototelegraphy apparatus; photovoltaic cells; physics (apparatus and instruments for -); pince-nez; pipettes; plane tables [surveying instruments]; planimeters; plates for batteries; plotters; plugs, sockets and other contacts [electric connections]; plumb bobs; plumb lines; pocket calculators; polarimeters;

portable media players; portable telephones; precision balances; precision measuring apparatus; pressure indicator plugs for valves; pressure indicators; pressure measuring apparatus; printed circuit boards; printed circuits; prisms [optics]; probes for scientific purposes; projection apparatus; projection screens; protection devices against x-rays, not for medical purposes; protection devices for personal use against accidents; protective helmets; protective helmets for sports; protective masks; protective suits for aviators; protractors [measuring instruments]; punched card machines for offices; push buttons for bells; pyrometers; quantity indicators; radar apparatus; radio pagers; radiological apparatus for industrial purposes; radiology screens for industrial purposes; radios; radiotelegraphy sets; radiotelephony sets; railway traffic safety appliances; readers [data processing equipment]; receivers (audio-- and video- -); record player needles (apparatus for changing -); record players; reducers [electricity]; reflecting discs for wear, for the prevention of traffic accidents; refractometers; refractors; regulating apparatus, electric; relays, electric; remote control apparatus; resistances, electric; respirators for filtering air; respirators, other than for artificial respiration; resuscitation mannequins [teaching apparatus]; retorts; retorts' stands; revolution counters; rheostats; riding helmets; road signs, luminous or mechanical; rods for water diviners; rods [surveying instruments]; rulers [measuring instruments]; rules [measuring instruments]; saccharometers; safety restraints, other than for vehicle seats and sports equipment; safety tarpaulins; salinometers; satellite navigational apparatus; satellites for scientific purposes; scales; scanners [data processing equipment]; screens for photoengraving; screens [photography]; screw-tapping gauges; semi-conductors; sextants; sheaths for electric cables; shoes for protection against accidents, irradiation and fire; shutter releases [photography]; shutters [photography]; sighting telescopes for firearms; signal bells; signal lanterns; signalling buoys; signalling panels, luminous or mechanical; signalling whistles; signals, luminous or mechanical; signs, luminous; simulators for the steering and control of vehicles; sirens; skins (apparatus for measuring the thickness of -); slide calipers; slide projectors; slide-rules; slides [photography]; smoke detectors; socks, electrically heated; solar batteries; solderers' helmets; solenoid valves [electromagnetic switches]; sonars; sound alarms; sound locating instruments; sound recording apparatus; sound recording carriers; sound recording strips; sound reproduction apparatus; sound transmitting apparatus; sounding apparatus and machines; sounding leads; sounding lines; spark-guards; speaking tubes; spectacle cases; spectacle frames; spectacle glasses; spectacles [optics]; spectrograph apparatus; spectroscopes; speed checking apparatus for vehicles; speed indicators; speed measuring apparatus [photography]; speed regulators for record players; spherometers; spirit levels; spools [photography]; sprinkler systems for fire protection; stage lighting regulators; stands for photographic apparatus; starter cables for motors; steering apparatus, automatic, for vehicles; step-up transformers; stereoscopes; stereoscopic apparatus; stills for laboratory experiments; styli for record players; sulphitometers; sunglasses; surveying apparatus and instruments; surveying chains; surveying instruments; surveyors' levels; switchboards; switchboxes [electricity]; switches, electric; tachometers; tape recorders; taximeters; teaching apparatus; teeth protectors; telegraph wires; telegraphs [apparatus]; telemeters; telephone apparatus; telephone receivers; telephone transmitters; telephone wires; teleprompters; telerupters; telescopes; television apparatus; temperature indicators; terminals [electricity]; test tubes; testing apparatus not for medical purposes; theft prevention installations, electric; theodolites; thermionic tubes; thermometers, not for medical purposes; thermostats; thermostats for vehicles; ticket dispensers; time clocks [time recording devices]; time recording apparatus; time switches, automatic; tires (automatic indicators of low pressure in vehicle -); tone arms for record players; totalizers; traffic-light apparatus [signalling devices]; transformers [electricity]; transistors [electronic]; transmitters of electronic signals; transmitters [telecommunication]; transmitting sets [telecommunication]; transponders; triodes; tripods for cameras; urinometers; usb flash drives; vacuum gauges; vacuum tubes [radio]; variometers; vehicle breakdown warning triangles; vehicle radios; verniers; vests (am) bullet-proof -; video cassettes; video game cartridges; video recorders; video screens; video telephones; videotapes; viewfinders, photographic; viscosimeters; voltage regulators for vehicles; voltage surge protectors; voltmeters; voting machines; wafers [silicon slices]; waling glasses; walkie-talkies; washing trays [photography]; water level indicators; wavemeters; weighbridges; weighing apparatus and instruments; weighing machines; weights; whistle alarms; wind socks for indicating wind direction; wire connectors [electricity]; wires, electric; word processors; workmen's protective face-shields; wrist rests for use with computers; X-ray apparatus not for medical purposes; X-ray films, exposed; X-ray photographs, other than for medical purposes; X-ray tubes not for medical purposes; X-rays producing apparatus and installations, not for medical purposes; apparatus for the transmission of sound and image; telecommunications apparatus; mobile telecommunication apparatus; mobile telecommunications handsets; computer hardware; computer application software; application software; computer software downloadable from the Internet; recorded computer software; software applications; mobile software applications, downloadable applications for multimedia devices; computer

games; computer game software; computer games programs; PDAs (Personal Digital Assistants), pocket PCs, mobile telephones, laptop computers; telecommunications network apparatus; drivers software for telecommunications networks and for telecommunications apparatus; protective clothing; televisions; global positioning system [GPS] apparatus; satellite navigation devices; computer software recorded onto CD Rom; SD-Cards (secure digital cards); glasses, spectacle glasses, sunglasses, protective glasses and cases therefor; cameras; camera lenses; MP3 players; audio tapes, audio cassettes, audio discs; audio-video tapes, audio-video cassettes, audio-video discs; video tapes, video cassettes, video discs; CDs, DVDs; downloadable electronic publications; mouse mats; mobile telephone covers, mobile telephone cases; magnetic cards; encoded cards; mobile phone application software; software for telecommunication; software for the processing of financial transactions; parts and fittings for all the aforesaid goods; none of the aforesaid being computer operated printers and parts therefor, computer programmes in the field of printing; photo receptors.

Class 35: Advertising; business management; business administration; office functions; accounting; accounts (drawing up of statements of -); administrative processing of purchase orders; arranging newspaper subscriptions for others; arranging subscriptions to telecommunication services for others; auctioneering; auditing; bill-posting; business appraisals; business consultancy (professional -); business information; business inquiries; business investigations; business management and organization consultancy; business management assistance; business management consultancy; business management of performing artists; business management of sports people; business organization consultancy; business research; commercial administration of the licensing of the goods and services of others; commercial information agencies; commercial information and advice for consumers [consumer advice shop]; commercial or industrial management assistance; compilation of information into computer databases; compilation of statistics; cost price analysis; data search in computer files for others; economic forecasting; efficiency experts; employment agencies; file management (computerized -); importexport agencies; invoicing; management (advisory services for business -); office machines and equipment rental; opinion polling; outsourcing services [business assistance]; payroll preparation; personnel management consultancy; personnel recruitment; photocopying services; price comparison services; procurement services for others [purchasing goods and services for other businesses]; psychological testing for the selection of personnel; public relations; relocation services for businesses; rental of advertising space; rental of advertising time on communication media; rental of photocopying machines; rental of vending machines; sales promotion for others; secretarial services; shop window dressing; shorthand; sponsorship search; systemization of information into computer databases; tax preparation; telephone answering for unavailable subscribers; transcription; typing; word processing; organisation, operation and supervision of loyalty and incentive schemes; retail services and online retail services connected with scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, compact discs, DVDs and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software, fire-extinguishing apparatus, apparatus for the transmission of sound and image, telecommunications apparatus, mobile telecommunication apparatus, mobile telecommunications handsets, computer hardware, computer application software, apps, computer software, computer software downloadable from the Internet, recorded computer software, software applications, mobile software applications, downloadable applications for multimedia devices, computer games, computer game software, computer games programs, PDAs (Personal Digital Assistants), pocket PCs, mobile telephones, laptop computers, telecommunications network apparatus, drivers software for telecommunications networks and for telecommunications apparatus, protective clothing, protective helmets, televisions, headphones, global positioning system [GPS] apparatus, satellite navigation devices, computer software recorded onto CD Rom, SD-Cards (secure digital cards), glasses, spectacle glasses, sunglasses, protective glasses and cases therefor, contact lenses, cameras, camera lenses, MP3 players, audio tapes, audio cassettes, audio discs, audio-video tapes, audio-video cassettes, audio-video discs, video tapes, video cassettes, video discs, CDs, DVDs, downloadable electronic publications, mouse mats, magnets, mobile telephone covers, mobile telephone cases, magnetic cards, encoded cards, mobile phone application software, software for telecommunication, software for the processing of financial transactions, Paper, cardboard, printed matter, bookbinding material, photographs, stationery, adhesives for stationery or household purposes, artists' materials, paint brushes, typewriters and office requisites, instructional and teaching material, plastic materials for

packaging, printers' type, printing blocks, arts, crafts and modelling equipment, pictures, portraits, paintings, drawings, figurines of paper and cardboard, drawing instruments, drawing materials, modelling materials, packing bags of paper, packaging material, packaging materials made of paper, packaging materials made of cardboard, packaging material made of card, wrapping materials made of card, wrapping materials made of cardboard, wrapping materials made of paper, wrapping materials made of plastics, plastics for modelling, correcting and erasing implements, educational equipment, printing equipment, photo albums, writing implements, writing instruments, writing materials, writing or drawing books, writing pads, writing paper, stamping implements, books, catalogues, cards, instruction manuals, magazines, mail order catalogues, newspapers, pamphlets, periodical publications, calendars, decalcomanias, diaries, gift cards, gift vouchers, labels, maps, printed publications, thesauri, dictionaries, personal organizers, postage stamps, postcards, posters, appointment books, industrial paper and cardboard, money clips of precious metals, disposable paper products, absorbent paper, bathroom tissue, bibs of paper, coasters of paper or cardboard, tissues of paper, towels of paper, hygienic paper, kitchen paper, napkins made of paper for household use, table cloths of paper, table mats of paper, table mats of cardboard, toilet paper, toilet rolls, printed tariffs, credit cards without magnetic coding, cards for use in connection with sales and promotional incentive schemes and promotional services, printed forms, savings stamps, adhesive tapes for stationery or household purposes, gift boxes, gift bags, photographic printing paper, clothing, footwear, headgear, household or kitchen utensils and containers, jewellery, precious stones, horological and chronometric instruments, musical instruments, apparatus for lighting, textiles and textile goods, leather and imitations of leather, handbags, rucksacks, purses, bags and sports bags, travel bags, backpacks, duffel bags, boot bags, holdalls, wallets, purses, credit card holders, games and playthings, gymnastic and sporting articles, meat, fish, poultry, game, coffee, tea, cocoa, sugar, rice, beers, mineral waters, aerated waters and other non-alcoholic drinks, alcoholic beverages, matches; retail services and online retail services relating to telecommunication shops, clothes shops, garden centres; retail services and online retail services relating to foodstuffs, white goods, electric and electronic goods; information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 38: Telecommunications; cable television broadcasting; cellular telephone communication; communications by computer terminals; communications by fiber [fibre] optic networks; communications by telegrams; communications by telephone; computer aided transmission of messages and images; electronic bulletin board services [telecommunications services]; electronic mail; facsimile transmission; information about telecommunication; message sending; paging services [radio, telephone or other means of electronic communication]; providing access to databases; providing internet chatrooms; providing telecommunication channels for teleshopping services; providing telecommunications connections to a global computer network; providing user access to global computer networks; radio broadcasting; rental of access time to global computer networks; rental of facsimile apparatus; rental of message sending apparatus; rental of modems; rental of telecommunication equipment; rental of telephones; satellite transmission; telecommunications routing and junction services; teleconferencing services; telegraph services; telephone services; television broadcasting; telex services; transmission of digital files; transmission of greeting cards online; transmission of telegrams; voice mail services; wire service; wireless broadcasting; telecommunications services; mobile telecommunications services; telecommunications portal services; Internet portal services; mobile telecommunications network services; fixed line telecommunication services; provision of broadband telecommunications access; broadband services; broadcasting services; television broadcasting services; broadcasting services relating to Internet protocol TV; provision of access to Internet protocol TV; Internet access services; email and text messaging services; information services provided by means of telecommunication networks relating to telecommunications; services of a network provider, namely rental and handling of access time to data networks and databases, in particular the Internet; communications services for accessing a database; leasing of access time to a computer database; providing access to computer databases; rental of access time to a computer database; operation of a network, being telecommunication services; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 39: Transport; packaging and storage of goods; travel arrangement; air transport; aircraft rental; ambulance transport; armored-car transport; arranging of cruises; arranging of tours; barge transport;

boat rental; boat storage; boat transport; booking of seats for travel; bottling services; brokerage (freight -); carting; chauffeur services; coach (railway -) rental; courier services [messages or merchandise]; delivery of goods; delivery of goods by mail order; distribution of energy; electricity distribution; escorting of travellers; ferry-boat transport; flower delivery; franking of mail; freight forwarding; freight [shipping of goods]; freighting; hauling; horse rental; ice-breaking; launching of satellites for others; lighterage services; marine transport; message delivery; newspaper delivery; operating canal locks; packaging of goods; parcel delivery; passenger transport; piloting; pleasure boat transport; portorage; railway transport; refloating of ships; refrigerator rental; removal services; rental of diving bells; rental of diving suits; rental of freezers; rental of motor racing cars; rental of storage containers; rental of warehouses; rental of wheelchairs; rescue operations [transport]; river transport; salvage of ships; salvaging; shipbrokerage; sightseeing [tourism]; stevedoring; storage; storage information; storage of goods; storage (physical -) of electronically-stored data or documents; taxi transport; towing; tram transport; transport; transport and storage of trash; transport brokerage; transport by pipeline; transport of travellers; transport reservation; transportation information; transportation logistics; transporting furniture; travel reservation; truck (railway -) rental; underwater salvage; unloading cargo; vehicle breakdown assistance [towing]; water distribution; water supplying; wrapping of goods; provision of information relating to transport.

Class 41: Education; providing of training; entertainment; sporting and cultural activities; academies [education]; amusement parks; amusements; animal training; arranging and conducting of colloquiums; arranging and conducting of concerts; arranging and conducting of conferences; arranging and conducting of congresses; arranging and conducting of seminars; arranging and conducting of symposiums; arranging and conducting of workshops [training]; arranging of beauty contests; boarding schools; booking of seats for shows; bookmobile services; calligraphy services; casino facilities [gambling] (providing -); cinema presentations; circuses; club services [entertainment or education]; coaching [training]; conducting fitness classes; correspondence courses; disc jockey services; discotheque services; dubbing; education information; educational examination; electronic desktop publishing; entertainer services; entertainment information; fashion shows for entertainment purposes (organization of -); film production, other than advertising films; gambling; game services provided on-line from a computer network; games equipment rental; golf facilities (providing -); gymnastic instruction; health club services [health and fitness training]; holiday camp services [entertainment]; language interpreter services; layout services, other than for advertising purposes; lending libraries; live performances (presentation of -); microfilming; modelling for artists; movie studios; museum facilities (providing -) [presentation, exhibitions]; music composition services; music-halls; news reporters services; night clubs; nursery schools; operating lotteries; orchestra services; organization of balls; organization of competitions [education or entertainment]; organization of exhibitions for cultural or educational purposes; organization of shows [impresario services]; organization of sports competitions; party planning [entertainment]; personal trainer services [fitness training]; photographic reporting; photography; physical education; practical training [demonstration]; production of music; production of radio and television programmes; production of shows; providing amusement arcade services; providing karaoke services; providing on-line electronic publications, not downloadable; providing sports facilities; publication of books; publication of electronic books and journals on-line; publication of texts, other than publicity texts; radio entertainment; recording studio services; recreation facilities (providing -); recreation information; religious education; rental of audio equipment; rental of camcorders; rental of cine-films; rental of lighting apparatus for theatrical sets or television studios; rental of movie projectors and accessories; rental of radio and television sets; rental of show scenery; rental of skin diving equipment; rental of sound recordings; rental of sports equipment, except vehicles; rental of sports grounds; rental of stadium facilities; rental of stage scenery; rental of tennis courts; rental of video cassette recorders; rental of videotapes; scriptwriting services; sign language interpretation; sport camp services; subtitling; television entertainment; theatre productions; ticket agency services [entertainment]; timing of sports events; toy rental; translation; tuition; videotape editing; videotape film production; videotaping; vocational guidance [education or training advice]; vocational retraining; writing of texts, other than publicity texts; zoological garden services; interactive entertainment services; electronic games services provided by means of any communications network; entertainment and information services provided by means of telecommunication networks; provision of news information; television services; internet protocol television services; provision of entertainment by means of television and Internet protocol television; provision of musical events; entertainment club services; presentation of live performances; rental of music venues and stadiums; casino services; ticket reservations for entertainment, sporting and cultural events; ticket information services for entertainment, sporting and cultural events; ticket agency services for entertainment, sporting and

cultural events; provision of on-line computer games; rental of computer games programs; computer amusement services; provision of information, news and commentary in the field of computer games; arranging, organising and conducting computer game competitions; publishing services; providing online blogs; issuing of downloadable tickets in electronic format and paper tickets for entertainment, sporting and cultural events; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 43: Services for providing food and drink; provision of food and drink for consumption both on and off premises; bar services; wine bars; brasserie services; café services; catering (food and drink); self-service restaurants; snack-bars; delicatessens [restaurants]; fast food services; food preparation services; cocktail lounge services; rental of chairs, tables, table linen, glassware, cooking apparatus, meeting rooms, snack-bars; tea room services; banqueting services; provision of venues for parties, balls, weddings and events; crèche service; information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

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Class 41: Education; providing of training; entertainment; sporting and cultural activities; interactive entertainment services; electronic games services provided by means of any communications network; entertainment and information services relating to education, training, entertainment, sporting and cultural activities provided by means of telecommunications network provided by means of telecommunication networks; provision of news information; television production services, television programming services; television production and television programming services provided by means of internet protocol technology; provision of entertainment by means of television and internet protocol television; provision of musical events; entertainment club services; discotheque services; presentation of live performances; night clubs; rental of music venues and stadiums; casino services; Booking of seats for shows; books (publication of-); calligraphy services; digital imaging services; diving equipment (rental of skin-); education information; electronic desktop publishing; entertainment information; information (education-); information (entertainment-); information (recreation-); interpretation (sign language-); layout services, other than for advertising purposes; microfilming; modelling for artists; movie projectors and accessories (rental of-); providing on-line electronic publications [not downloadable]; providing on-line electronic publications, not downloadable; publication of books; publication of electronic books and journals on-line; publication of texts [other than publicity texts]; publication of texts, other than publicity texts; radio and television sets (rental of-); recorders (rental of video cassette-); recreation information; rental of audio equipment; rental of camcorders; rental of lighting apparatus for theatrical sets or television studios; rental of movie projectors and accessories; rental of radio and television sets; rental of show scenery; rental of skin diving equipment; rental of sports equipment [except vehicles]; rental of sports equipment, except vehicles; rental of stage scenery; rental of video cameras; rental of video cassette recorders; show scenery (rental of-); sign language interpretation; sports equipment (rental of-) [except vehicles]; sports equipment (rental of-), except vehicles; sports events (timing of-); stage scenery (rental of-); television sets (rental of radio and-); texts (publication of-), other than publicity texts; ticket agency services [entertainment]; timing of sports events; translation; videotaping; information and advisory services relating to the aforesaid.

Class 43: Services for providing food and drink; restaurant, bar, café and snack bar services; information and advisory services relating to the aforesaid.

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Class 41: Education; providing of training; entertainment; sporting and cultural activities; interactive entertainment services; electronic games services provided by means of any communications network; entertainment and information services provided by means of telecommunication networks; provision of news information; information services provided by means of telecommunication networks relating to

telecommunications; television services; Internet protocol television services; provision of entertainment by means of television and Internet protocol television; provision of musical events; entertainment club services; discotheque services; presentation of live performances; night clubs; rental of music venues and stadiums; casino services; information and advisory services relating to the aforesaid.

Class 43: Services for providing food and drink; restaurant, bar, café and snack bar services; information and advisory services relating to the aforesaid.

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Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer software; fire-extinguishing apparatus; telecommunications apparatus; mobile telecommunication apparatus; mobile telecommunications handsets; digital telecommunication apparatus and instruments; digital tablets; computer hardware; computer application software; computer software downloadable from the Internet; recorded computer software; software applications; mobile software applications, downloadable applications for multimedia devices; computer games; computer game software; computer games programs; PDAs (Personal Digital Assistants); pocket PCs; mobile telephones; laptop computers; telecommunications network apparatus; drivers software for telecommunications networks and for telecommunications apparatus; protective clothing; protective helmets; televisions; headphones; global positioning system [GPS] apparatus; satellite navigation devices; computer software recorded onto CD Rom; SD-Cards (secure digital cards); glasses; spectacle glasses; sunglasses; protective glasses and cases therefor; contact lenses; cameras; camera lenses; MP3 players; audio tapes, audio cassettes; audio discs; audio-video tapes; audio-video cassettes; audio-video discs; video tapes; video cassettes; video discs; CDs, DVDs; downloadable electronic publications; downloadable image files; downloadable music files; mouse mats; magnets; mobile telephone covers; mobile telephone cases; hands free kits for phones; magnetic cards; encoded cards; mobile phone application software; software for telecommunication; software for the processing of financial transactions; electronic notice boards; electric batteries; battery chargers; security alarms; security cameras; security warning apparatus; security control apparatus; security surveillance apparatus; computer software for security purposes; computer software for insurance purposes; SIM cards; aerials; alarms; electric cables; chemistry apparatus and instruments; recorded computer operating programs; computer peripheral devices; data processing apparatus; diagnostic apparatus, not for medical purposes; distance measuring apparatus; distance recording apparatus; downloadable ring tones for mobile phones; electronic tags for goods; eyepieces; goggles for sports; magnetic identity cards; intercommunication apparatus; loudspeakers; magnetic data media; mathematical instruments; modems; electric monitoring apparatus; television apparatus; testing apparatus not for medical purposes; telecommunication transmitters; parts and fittings for all the aforesaid goods; none of the aforesaid goods being microphones or microphone cables.

Class 35: Advertising; business management; business administration; office functions; organisation, operation and supervision of loyalty and incentive schemes; retail services and online retail services connected with the sale of scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images; retail services and online retail services connected with the sale of magnetic data carriers, recording discs, compact discs, DVDs and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software, fire-extinguishing apparatus, apparatus for the transmission of sound and image, telecommunications apparatus, mobile telecommunication apparatus, mobile telecommunications handsets; retail services and online retail services connected with the sale of digital telecommunication apparatus and instruments, digital tablets, computer hardware, computer application software, computer software downloadable from the Internet, recorded computer software, software applications, mobile software applications, downloadable applications for multimedia devices, computer games,

computer game software, computer games programs, PDAs (Personal Digital Assistants); retail services and online retail services connected with the sale of pocket PCs, mobile telephones, laptop computers, telecommunications network apparatus, drivers software for telecommunications networks and for telecommunications apparatus, protective clothing, protective helmets, televisions, headphones, global positioning system [GPS] apparatus, satellite navigation devices, computer software recorded onto CD Rom, SD-Cards (secure digital cards), glasses, spectacle glasses, sunglasses; retail services and online retail services connected with the sale of protective glasses and cases therefor, contact lenses, cameras, camera lenses, MP3 players, audio tapes, audio cassettes, audio discs, audio-video tapes, audio-video cassettes, audio-video discs, video tapes, video cassettes, video discs, CDs, DVDs, downloadable electronic publications, downloadable image files, downloadable music files, mouse mats, magnets, mobile telephone covers, mobile telephone cases; retail services and online retail services connected with the sale of hands free kits for phones, magnetic cards, encoded cards, mobile phone application software, software for telecommunication, software for the processing of financial transactions, electronic notice boards, electric batteries, battery chargers, security alarms, security cameras, security warning apparatus, security control apparatus, security surveillance apparatus, computer software for security purposes; retail services and online retail services connected with the sale of computer software for insurance purposes, SIM cards, aerials, alarms, electric cables, chemistry apparatus and instruments, recorded computer operating programs, computer peripheral devices, data processing apparatus, diagnostic apparatus, not for medical purposes, distance measuring apparatus, distance recording apparatus, downloadable ring tones for mobile phones, electronic tags for goods; retail services and online retail services connected with the sale of electronic tags for goods, eyepieces, goggles for sports, magnetic identity cards, intercommunication apparatus, loudspeakers, magnetic data media, mathematical instruments, modems, electric monitoring apparatus, television apparatus, testing apparatus not for medical purposes, telecommunication transmitters, paper, cardboard, printed matter, photographs, stationery; retail services and online retail services connected with the sale of office requisites, instructional and teaching material, packaging material, educational equipment, writing implements, writing instruments, writing materials, books, catalogues, cards, instruction manuals, magazines, mail order catalogues, newspapers, pamphlets, periodical publications, calendars, diaries, labels, maps, printed publications, postcards, posters, printed tariffs, printed forms; retail services and online retail services connected with the sale of gift boxes, gift bags, clothing, footwear, headgear, household or kitchen utensils and containers, jewellery, precious stones, horological and chronometric instruments, musical instruments, apparatus for lighting, textiles, household textile articles, leather and imitations of leather, handbags, rucksacks, purses, bags and sports bags, travel bags, backpacks, duffel bags; retail services and online retail services connected with the sale of boot bags, holdalls, wallets, purses, credit card holders, games and playthings, gymnastic and sporting articles, meat, fish, poultry, game, coffee, tea, cocoa, sugar, rice, beers, mineral waters, aerated waters and other non-alcoholic drinks, alcoholic beverages, matches; retail services and online retail services relating to white goods; arranging subscriptions to telecommunications for others; compilation and systemisation of information into computer databases; compilation of statistics; cost price analysis; arranging of competitions for advertising purposes; recruitment services; employment recruitment; employment consultancy; employment agencies; providing employment information; commercial administration of the licensing of the goods and services of others; commercial information and advice for consumers [consumer advice shop]; opinion polling; personnel recruitment; price comparison services; procurement services for others [purchasing goods and services for other businesses]; rental of advertising space; rental of advertising time on communication media; sales promotion for others; sponsorship search; information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 38: Telecommunications; cable television broadcasting; cellular telephone communication; communications by computer terminals; communications by fiber [fibre] optic networks; communications by telephone; computer aided transmission of messages and images; electronic bulletin board services [telecommunications services]; electronic mail; facsimile transmission; information about telecommunication; message sending; paging services [radio, telephone or other means of electronic communication]; providing access to databases; providing internet chatrooms; providing telecommunication channels for teleshopping services; providing telecommunications connections to a global computer network; providing user access to global computer networks; radio broadcasting; rental of access time to global computer networks; rental of message sending apparatus; rental of modems; rental of telecommunication equipment; rental of telephones; satellite transmission;

telecommunications routing and junction services; teleconferencing services; telegraph services; telephone services; television broadcasting; telex services; transmission of digital files; transmission of greeting cards online; transmission of telegrams; voice mail services; wire service; wireless broadcasting; telecommunications services; mobile telecommunications services; telecommunications portal services; Internet portal services; mobile telecommunications network services; fixed line telecommunication services; provision of broadband telecommunications access; broadband services; wireless communication services; digital communication services; broadcasting services; television broadcasting services; broadcasting services relating to Internet protocol TV; provision of access to Internet protocol TV; Internet access services; email and text messaging services; telecommunications information provided via telecommunication networks; services of a network provider, namely rental and handling of access time to data networks and databases, in particular the Internet; communications services for accessing a database; leasing of access time to a computer database; providing access to computer databases; rental of access time to a computer database; operation of a network, being telecommunication services; providing electronic bulletin board services; providing access to weblogs; providing access to podcasts; chatroom services for social networking; providing online forums; forums for social networking; providing electronic telecommunication connections; routing and connecting services for telecommunications; rental of telecommunications equipment; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 42: Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; calibration [measuring]; cloud seeding; computer programming; computer rental; computer software consultancy; computer software design; updating of computer software; computer system analysis; computer system design; construction drafting; consultancy in the design and development of computer hardware; consultancy in the field of energy-saving; conversion of data or documents from physical to electronic media; creating and maintaining web sites for others; data conversion of computer programs and data [not physical conversion]; digitization of documents [scanning]; duplication of computer programs; engineering; hosting computer sites [web sites]; industrial design; installation of computer software; scientific laboratory services; land surveying; maintenance of computer software; material testing; mechanical research; monitoring of computer systems by remote access; packaging design; technical project studies; providing search engines for the internet; provision of scientific information, advice and consultancy in relation to carbon offsetting; quality control; recovery of computer data; rental of computer software; rental of web servers; research and development for others; surveying; technical research; it services; computer programming services; programming of data processing equipment; recovery of computer data; consultancy in the field of computer hardware; rental of computer hardware; application service provider (ASP); consultancy in the field of computer software; creating and maintaining blogs for others; expert advice and expert opinion relating to technology; rental of data processing apparatus and computers; technical services relating to projection and planning of equipment for telecommunications; product research services; weather forecasting; research in the field of telecommunication technology; monitoring of network systems in the field of telecommunications; technical support services relating to telecommunications and apparatus; data security services; data security services [firewalls]; research relating to security; computer security system monitoring services; maintenance of computer software relating to computer security and prevention of computer risks; updating of computer software relating to computer security and prevention of computer risks; computer virus protection services; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

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Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; mechanisms for coin-operated

apparatus; cash registers, calculating machines, data processing equipment, computers; computer software; fire-extinguishing apparatus; apparatus for the transmission of sound and image; telecommunications apparatus; mobile telecommunication apparatus; mobile telecommunications handsets; computer hardware; computer application software; computer software; computer software downloadable from the Internet; PDAs (Personal Digital Assistants), pocket PCs, mobile telephones, laptop computers; telecommunications network apparatus; drivers software for telecommunications networks and for telecommunications apparatus; protective clothing; protective helmets; televisions; headphones; satellite navigation devices; computer software recorded onto CD Rom; SD-Cards (secure digital cards); glasses, spectacle glasses, sunglasses, protective glasses and cases therefor; contact lenses; cameras; camera lenses; MP3 players; audio tapes, audio cassettes, audio discs; audio-video tapes, audio-video cassettes, audio-video discs; video tapes, video cassettes, video discs; CDs, DVDs; electronic publications (downloadable); mouse mats; magnets; mobile telephone covers, mobile telephone cases; magnetic cards; encoded cards; parts and fittings for all the aforesaid goods.

Class 35: Advertising; business management; business administration; office functions; organisation, operation and supervision of loyalty and incentive schemes; retail services and online retail services connected with the sale of scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, automatic vending machines and mechanisms for coin operated apparatus, cash registers, calculating machines, data processing equipment and computers, fire-extinguishing apparatus, apparatus for the transmission of sound and image, telecommunications apparatus, mobile telecommunication apparatus, mobile telecommunications handsets, computer hardware, computer application software, computer software, computer software downloadable from the Internet, PDAs (Personal Digital Assistants), pocket PCs, mobile telephones, laptop computers, telecommunications network apparatus, drivers software for telecommunications networks and for telecommunications apparatus, protective clothing, protective helmets, televisions, computer software recorded onto CD Rom, SD-Cards (secure digital cards), glasses, spectacle glasses, sunglasses, protective glasses and cases therefor, contact lenses, cameras, camera lenses, MP3 players, audio tapes, audio cassettes, audio discs, audio-video tapes, audio-video cassettes, audio-video discs, video tapes, video cassettes, video discs, CDs, DVDs, electronic publications (downloadable), mouse mats, magnets, mobile telephone covers, mobile telephone cases, magnetic cards, encoded cards, paper, cardboard, printed matter, book binding material, photographs, stationery, adhesives for stationery or household purposes, artists' materials, paint brushes, typewriters and office requisites, instructional and teaching material, plastic materials for packaging, printers' type, printing blocks, books, calendars, cards, catalogues, programmes, writing paper, envelopes, pads, notebooks, diaries, greeting cards, magazines, pamphlets, pens, pencils, postcards, posters, decalcomanias, stickers, tickets, beer mats, coasters of paper and cardboard, napkins of paper, tissues and towels of paper, bags of paper and/or plastic material, clothing, footwear, headgear, household or kitchen utensils and containers, jewellery, precious stones, horological and chronometric instruments, musical instruments, apparatus for lighting, textiles and textile piece goods, leather and imitations of leather, handbags, rucksacks, purses, bags and sports bags, travel bags, backpacks, duffel bags, boot bags, holdalls, wallets, purses, credit card holders, games and playthings, gymnastic and sporting articles, meat, fish, poultry, game, coffee, tea, cocoa, sugar, rice, beers, mineral waters, aerated waters and other non-alcoholic drinks, alcoholic beverages, matches; information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 38: Telecommunications; telecommunications services; mobile telecommunications services; telecommunications portal services; Internet portal services; mobile telecommunications network services; fixed line telecommunication services; provision of broadband telecommunications access; broadband services; broadcasting services; television broadcasting services; broadcasting services relating to internet protocol TV; provision of access to Internet protocol TV; Internet access services; email and text messaging services; information services provided by means of telecommunication networks relating to telecommunications; services of a network provider, namely rental and handling of access time to data networks and databases, in particular the Internet; provision of access time for data networks and data banks, in particular the Internet; communications services for accessing a database, leasing of access time to a computer database; providing access to computer databases; rental of

access time to a computer database; operation of a network, being telecommunication services; expert advice and opinion relating to telecommunications; planning relating to telecommunications equipment; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 41: Education; providing of training; entertainment; sporting and cultural activities; interactive entertainment services; electronic games services provided by means of any communications network; entertainment and information services provided by means of telecommunication networks; provision of news information; television production services; television entertainment services; internet protocol television services; provision of entertainment by means of television and Internet protocol television; provision of musical events; entertainment club services; discotheque services; presentation of live performances; night clubs; rental of music venues and stadiums; casino services; ticket reservations for entertainment, sporting and cultural events; ticket information services for entertainment, sporting and cultural events; ticket agency services; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.